

NATIVIDAD GEMPESAW, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND PHILIPPINE BANK OF COMMUNICATIONS, RESPONDENTS.

G.R. No. 92244. February 09, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

From the adverse decision[*] of the Court of Appeals (CA--G.R. CV No. 16447), petitioner, Natividad Gempesaw, appealed to this Court in a Petition for Review, on the issue of the right of the drawer to recover from the drawee bank who pays' a check with a forged indorsement of the payee, debiting the same against the drawer's account.

The records show that on January 23, 1985, petitioner filed a Complaint against the private respondent Philippine Bank of Communications (respondent drawee Bank) for recovery of the money value of eighty-two (82) checks charged against the petitioner's account with respondent drawee Bank on the ground that the payees' endorsements were forgeries. The Regional Trial Court, Branch CXXVIII of Caloocan City, which tried the case, rendered a decision on November 17, 1987 dismissing the complaint as well as the respondent drawee Bank's counterclaim. On appeal, the Court of Appeals in a decision rendered on February 22, 1990, affirmed the decision of the RTC on two grounds, namely (1) that the plaintiff's (petitioner herein) gross negligence in issuing the checks was the proximate cause of the loss and (2) assuming that the bank was also negligent, the loss must nevertheless be borne by the party whose negligence was the proximate cause of the loss. On March 5, 1990, the petitioner filed this petition under Rule 45 of the Rules of Court setting forth the following as the alleged errors of the respondent Court[1]:

"I

THE RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE NEGLIGENCE OF THE DRAWER IS THE PROXIMATE CAUSE OF THE RESULTING INJURY TO THE DRAWEE BANK, AND THE DRAWER IS PRECLUDED FROM SETTING UP THE FORGERY OR WANT OF AUTHORITY.

II

THE RESPONDENT COURT OF APPEALS ALSO ERRED IN NOT FINDING AND RULING THAT IT IS THE GROSS AND INEXCUSABLE NEGLIGENCE AND FRAUDULENT ACTS OF THE OFFICIALS AND EMPLOYEES OF THE RESPONDENT BANK IN FORGING THE SIGNATURE OF THE PAYEES AND THE WRONG AND/OR ILLEGAL PAYMENTS MADE TO PERSONS, OTHER THAN TO THE INTENDED PAYEES SPECIFIED IN THE CHECKS, IS THE DIRECT AND PROXIMATE CAUSE OF THE DAMAGE TO PETITIONER WHOSE SAVING (SIC) ACCOUNT WAS DEBITED.

III

THE RESPONDENT COURT OF APPEALS ALSO ERRED IN NOT ORDERING THE RESPONDENT BANK TO RESTORE OR RE-CREDIT THE CHECKING ACCOUNT OF PETITIONER IN THE CALOOCAN CITY BRANCH BY THE VALUE OF THE EIGHTY TWO (82) CHECKS WHICH IS IN

THE AMOUNT OF P1,208,606.89 WITH LEGAL INTEREST."

From the records, the relevant facts are as follows:

Petitioner Natividad O. Gempesaw (petitioner) owns and operates four grocery stores located at Rizal Avenue Extension and at Second Avenue, both in Caloocan City. Among these groceries are D.G. Shopper's Mart and D.G. Whole Sale Mart. Petitioner maintains a checking account numbered 13-00038-1 with the Caloocan City Branch of the respondent drawee Bank. To facilitate payment of debts to her suppliers, petitioner draws checks against her checking account with the respondent bank as drawee. Her customary practice of issuing checks in payment of her suppliers was as follows: The checks were prepared and filled up as to all material particulars by her trusted bookkeeper, Alicia Galang, an employee for more than eight (8) years. After the bookkeeper prepared the checks, the completed checks were submitted to the petitioner for her signature, together with the corresponding invoice receipts which indicate the correct obligations due and payable to her suppliers. Petitioner signed each and every check without bothering to verify the accuracy of the checks against the corresponding invoices because she reposed full and implicit trust and confidence on her bookkeeper. The issuance and delivery of the checks to the payees named therein were left to the bookkeeper. Petitioner admitted that she did not make any verification as to whether or not the checks were actually delivered to their respective payees. Although the respondent drawee Bank notified her of all checks presented to and paid by the bank, petitioner did not verify the correctness of the returned checks, much less check if the payees actually received the checks in payment for the supplies she received. In the course of her business operations covering a period of two years, petitioner issued, following her usual practice stated above, a total of eighty-two (82) checks in favor of several suppliers. These checks were all presented by the indorsees as holders thereof to, and honored by, the respondent drawee Bank. Respondent drawee Bank correspondingly debited the amounts thereof against petitioner's checking account numbered 30--00038-1. Most of the aforementioned checks were for amounts in excess of her actual obligations to the various payees as shown in their corresponding invoices. To mention a few:

"x x x 1) in Check No. 621127, dated June 27, 1984 in the amount of P11,895.23 in favor of Kawsek Inc. (Exh. A-60), appellant's actual obligation to said payee was only P895.33 (Exh. A--83); (2) in Check No. 652282 issued on September 18, 1984 in favor of Senson Enterprises in the amount of P11,041.20 (Exh. A-67) appellant's actual obligation to said payee was only P1,041.20 (Exh. 7); (3) in Check No. 589092 dated April 7, 1984 for the amount of P11,672.47 in favor of Marchem (Exh. A-61) appellant's obligation was only P1,672.47 (Exh. B); (4) in Check No. 620450 dated May 10, 1984 in favor of Knotberry for P11,677.10 (Exh. A-31) her actual obligation was only P677.10 (Exhs. C and C-1); (5) in Check No. 651862 dated August 9, 1984 in favor of Malinta Exchange Mart for P11,107.16 (Exh. A-62), her obligation was only P1,107.16 (Exh. D-2); (6) in Check No. 651863 dated August 11, 1984 in favor of Grocer's International Food Corp. in the amount of P11,335.60 (Exh. A-66), her obligation was only P1,335.60 (Exh. E and E-1); (7) in Check No. 589019 dated March 17, 1984 in favor of Sophy Products in the amount of P11,648.00 (Exh. A-78), her obligation was only P648.00 (Exh. G); (8) in Check No. 589028 dated March 10, 1984 for the amount of P11,520.00 in favor of the Yakult Philippines (Exh. A-73), the latter's invoice was only P520.00 (Exh. H-2); (9) in Check No. 62033 dated May 24, 1984 in the amount of P11,504.00 in favor of Monde Denmark Biscuit (Exh. A-34), her obligation was only P504.00 (Exhs. I-1 and I-2)."[2]

Practically, all the checks issued and honored by the respondent drawee Bank were crossed checks.[3] Aside from the daily notice given to the petitioner by the respondent drawee Bank, the latter also furnished her with a monthly statement of her bank transactions, attaching thereto all the cancelled checks she had issued and which were debited against her current account. It was only after the lapse of more than two (2) years that petitioner found out about the fraudulent manipulations of her bookkeeper.

All the eighty-two (82) checks with forged signatures of the payees were brought to Ernest L. Boon, Chief

Accountant of respondent drawee Bank at the Buendia branch, who, without authority therefor, accepted them all for deposit at the Buendia branch to the credit and/or in the accounts of Alfredo Y. Romero and Benito Lam. Ernest L. Boon was a very close friend of Alfredo Y. Romero. Sixty-three (63) out of the eighty-two (82) checks were deposited in Savings Account No. 00844-5 of Alfredo Y. Romero at the respondent drawee Bank's Buendia branch, and four (4) checks in his Savings Account No. 32-81-9 at its Ongpin branch. The rest of the checks were deposited in Account No. 0443-4, under the name of Benito Lam at the Elcano branch of the respondent drawee Bank.

About thirty (30) of the payees whose names were specifically written on the checks testified that they did not receive nor even see the subject checks and that the indorsements appearing at the back of the checks were not theirs.

The team of auditors from the main office of the respondent drawee Bank which conducted periodical inspection of the branches' operations failed to discover, check or stop the unauthorized acts of Ernest L. Boon. Under the rules of the respondent drawee Bank, only a Branch Manager, and no other official of the respondent drawee Bank, may accept a second indorsement on a check for deposit. In the case at bar, all the deposit slips of the eighty-two (82) checks in question were initialed and/or approved for deposit by Ernest L. Boon. The Branch Managers of the Ongpin and Elcano branches accepted the deposits made in the Buendia branch and credited the accounts of Alfredo Y. Romero and Benito Lam in their respective branches.

On November 7, 1984, petitioner made a written demand on respondent drawee Bank to credit her account with the money value of the eighty-two (82) checks totalling P1,208,606.89 for having been wrongfully charged against her account. Respondent drawee Bank refused to grant petitioner's demand. On January 23, 1985, petitioner filed the complaint with the Regional Trial Court.

This is not a suit by the party whose signature was forged on a check drawn against the drawee bank. The payees are not parties to the case. Rather, it is the drawer, whose signature is genuine, who instituted this action to recover from the drawee bank the money value of eighty-two (82) checks paid out by the drawee bank to holders of those checks where the endorsements of the payees were forged. How and by whom the forgeries were committed are not established on the record, but the respective payees admitted that they did not receive those checks and therefore never indorsed the same. The applicable law is the Negotiable Instruments Law[4] (heretofore referred to as the NIL). Section 23 of the NIL provides:

"When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."

Under the aforecited provision, forgery is a real or absolute defense by the party whose signature is forged. A party whose signature to an instrument was forged was never a party and never gave his consent to the contract which gave rise to the instrument. Since his signature does not appear in the instrument, he cannot be held liable thereon by anyone, not even by a holder in due course. Thus, if a person's signature is forged as a maker of a promissory note, he cannot be made to pay because he never made the promise to pay. Or where a person's signature as a drawer of a check is forged, the drawee bank cannot charge the amount thereof against the drawer's account because he never gave the bank the order to pay. And said section does not refer only to the forged signature of the maker of a promissory note and of the drawer of a check. It covers also a forged indorsement, i.e., the forged signature of the payee or indorsee of a note or check. Since under said provision a forged signature is "wholly inoperative", no one can gain title to the instrument through such forged indorsement. Such an indorsement prevents any subsequent party from acquiring any right as against any party whose name appears

prior to the forgery. Although rights may exist between and among parties subsequent to the forged indorsement, not one of them can acquire rights against parties prior to the forgery. Such forged indorsement cuts off the rights of all subsequent parties as against parties prior to the forgery. However, the law makes an exception to these rules where a party is precluded from setting up forgery as a defense.

As a matter of practical significance, problems arising from forged indorsements of checks may generally be broken into two types of cases: (1) where forgery was accomplished by a person not associated with the drawer -- for example a mail robbery; and (2) where the indorsement was forged by an agent of the drawer. This difference in situations would determine the effect of the drawer's negligence with respect to forged endorsements. While there is no duty resting on the depositor to look for forged endorsements on his cancelled checks in contrast to a duty imposed upon him to look for forgeries of his own name, a depositor is under a duty to set up an accounting system and a business procedure as are reasonably calculated to prevent or render difficult the forgery of indorsements, particularly by the depositor's own employees. And if the drawer (depositor) learns that a check drawn by him has been paid under a forged indorsement, the drawer is under duty promptly to report such fact to the drawee bank.[5] For his negligence or failure either to discover or to report promptly the fact of such forgery to the drawee, the drawer loses his right against the drawee who has debited his account under the forged endorsement.[6] In other words, he is precluded from using forgery as a basis for his claim for recrediting of his account.

In the case at bar, petitioner admitted that the checks were filled up and completed by her trusted employee, Alicia Galang, and were later given to her for her signature. Her signing the checks made the negotiable instrument complete. Prior to signing the checks, there was no valid contract yet.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument to the payee for the purpose of giving effect thereto.[7] The first delivery of the instrument, complete in form, to the payee who takes it as a holder, is called issuance of the instrument.[8] Without the initial delivery of the instrument from the drawer of the check to the payee, there can be no valid and binding contract and no liability on the instrument.

Petitioner completed the checks by signing them as drawer and thereafter authorized her employee Alicia Galang to deliver the eighty-two (82) checks to their respective payees. Instead of issuing the checks to the payees as named in the checks, Alicia Galang delivered them to the Chief Accountant of the Buendia branch of the respondent drawee Bank, a certain Ernest L. Boon. It was established that the signatures of the payees as first indorsers were forged. The record fails to show the identity of the party who made the forged signatures. The checks were then indorsed for the second time with the names of Alfredo Y. Romero and Benito Lam, and were deposited in the latter's accounts as earlier noted. The second indorsements were all genuine signatures of the alleged holders. All the eighty-two (82) checks bearing the forged indorsements of the payees and the genuine second indorsements of Alfredo Y. Romero and Benito Lam were accepted for deposit at the Buendia branch of respondent drawee Bank to the credit of their respective savings accounts in the Buendia, Ongpin and Elcano branches of the same bank. The total amount of P1,208,606.89, represented by eighty-two (82) checks, were credited and paid out by respondent drawee Bank to Alfredo Y. Romero and Benito Lam, and debited against petitioner's checking account No. 13-00038-1, Caloocan branch.

As a rule, a drawee bank who has paid a check on which an indorsement has been forged cannot charge the drawer's account for the amount of said check. An exception to this rule is where the drawer is guilty of such negligence which causes the bank to honor such a check or checks. If a check is stolen from the payee, it is quite obvious that the drawer cannot possibly discover the forged indorsement by mere examination of his cancelled check. This accounts for the rule that although a depositor owes a duty to his drawee bank to examine his

cancelled checks for forgery of his own signature, he has no similar duty as to forged indorsements. A different situation arises where the indorsement was forged by an employee or agent of the drawer, or done with the active participation of the latter. Most of the cases involving forgery by an agent or employee deal with the payee's indorsement. The drawer and the payee oftentimes have business relations of long standing. The continued occurrence of business transactions of the same nature provides the opportunity for the agent/employee to commit the fraud after having developed familiarity with the signatures of the parties. However, sooner or later, some leak will show on the drawer's books. It will then be just a question of time until the fraud is discovered. This is specially true when the agent perpetrates a series of forgeries as in the case at bar.

The negligence of a depositor which will prevent recovery of an unauthorized payment is based on failure of the depositor to act as a prudent businessman would under the circumstances. In the case at bar, the petitioner relied implicitly upon the honesty and loyalty of her bookkeeper, and did not even verify the accuracy of the amounts of the checks she signed against the invoices attached thereto. Furthermore, although she regularly received her bank statements, she apparently did not carefully examine the same nor the check stubs and the returned checks, and did not compare them with the sales invoices. Otherwise, she could have easily discovered the discrepancies between the checks and the documents serving as bases for the checks. With such discovery, the subsequent forgeries would not have been accomplished. It was not until two years after the bookkeeper commenced her fraudulent scheme that petitioner discovered that eighty-two (82) checks were wrongfully charged to her account, at which time she notified the respondent drawee Bank.

It is highly improbable that in a period of two years, not one of petitioner's suppliers complained of non-payment. Assuming that even one single complaint had been made, petitioner would have been duty-bound, as far as the respondent drawee Bank was concerned, to make an adequate investigation on the matter. Had this been done, the discrepancies would have been discovered, sooner or later. Petitioner's failure to make such adequate inquiry constituted negligence which resulted in the bank's honoring of the subsequent checks with forged indorsements. On the other hand, since the record mentions nothing about such a complaint, the possibility exists that the checks in question covered inexistent sales. But even in such a case, considering the length of a period of two (2) years, it is hard to believe that petitioner did not know or realize that she was paying much more than she should for the supplies she was actually getting. A depositor may not sit idly by, after knowledge has come to her that her funds seem to be disappearing or that there may be a leak in her business, and refrain from taking the steps that a careful and prudent businessman would take in such circumstances and if taken, would result in stopping the continuance of the fraudulent scheme. If she fails to take such steps, the facts may establish her negligence, and in that event, she would be estopped from recovering from the bank.[9]

One thing is clear from the records -- that the petitioner failed to examine her records with reasonable diligence whether before she signed the checks or after receiving her bank statements. Had the petitioner examined her records more carefully, particularly the invoice receipts, cancelled checks, check book stubs, and had she compared the sums written as amounts payable in the eighty-two (82) checks with the pertinent sales invoices, she would have easily discovered that in some checks, the amounts did not tally with those appearing in the sales invoices. Had she noticed these discrepancies, she should not have signed those checks, and should have conducted an inquiry as to the reason for the irregular entries. Likewise, had petitioner been more vigilant in going over her current account by taking careful note of the daily reports made by respondent drawee Bank on her issued checks, or at least made random scrutiny of her cancelled checks returned by respondent drawee Bank at the close of each month, she could have easily discovered the fraud being perpetrated by Alicia Galang, and could have reported the matter to the respondent drawee Bank. The respondent drawee Bank then could have taken immediate steps to prevent further commission of such fraud. Thus, petitioner's negligence was the proximate cause of her loss. And since it was her negligence which caused the respondent drawee Bank to honor the forged

checks or prevented it from recovering the amount it had already paid on the checks, petitioner cannot now complain should the bank refuse to recredit her account with the amount of such checks.[10] Under Section 23 of the NIL, she is now precluded from using the forgery to prevent the bank's debiting of her account.

The doctrine in the case of *Great Eastern Life Insurance Co. vs. Hongkong & Shanghai Bank*[11] is not applicable to the case at bar because in said case, the check was fraudulently taken and the signature of the payee was forged not by an agent or employee of the drawer. The drawer was not found to be negligent in the handling of its business affairs and the theft of the check by a total stranger was not attributable to negligence of the drawer; neither was the forging of the payee's indorsement due to the drawer's negligence. Since the drawer was not negligent, the drawee was duty-bound to restore to the drawer's account the amount theretofore paid under the check with a forged payee's indorsement because the drawee did not pay as ordered by the drawer.

Petitioner argues that respondent drawee Bank should not have honored the checks because they were crossed checks. Issuing a crossed check imposes no legal obligation on the drawee not to honor such a check. It is more of a warning to the holder that the check cannot be presented to the drawee bank for payment in cash. Instead, the check can only be deposited with the payee's bank which in turn must present it for payment against the drawee bank in the course of normal banking transactions between banks. The crossed check cannot be presented for payment but it can only be deposited and the drawee bank may only pay to another bank in the payee's or indorser's account.

Petitioner likewise contends that banking rules prohibit the drawee bank from having checks with more than one indorsement. The banking rule banning acceptance of checks for deposit or cash payment with more than one indorsement unless cleared by some bank officials does not invalidate the instrument; neither does it invalidate the negotiation or transfer of the said check. In effect, this rule destroys the negotiability of bills/checks by limiting their negotiation by indorsement of only the payee. Under the NIL, the only kind of indorsement which stops the further negotiation of an instrument is a restrictive indorsement which prohibits the further negotiation thereof.

"Sec. 36. When indorsement restrictive. -- An indorsement is restrictive which either

(a) Prohibits further negotiation of the instrument; or

x x x."

In this kind of restrictive endorsement, the prohibition to transfer or negotiate must be written in express words at the back of the instrument, so that any subsequent party may be forewarned that it ceases to be negotiable. However, the restrictive indorsee acquires the right to receive payment and bring any action thereon as any indorser, but he can no longer transfer his rights as such indorsee where the form of the indorsement does not authorize him to do so.[12]

Although the holder of a check cannot compel a drawee bank to honor it because there is no privity between them, as far as the drawer-depositor is concerned, such bank may not legally refuse to honor a negotiable bill of exchange or a check drawn against it with more than one indorsement if there is nothing irregular with the bill or check and the drawer has sufficient funds. The drawee cannot be compelled to accept or pay the check by the drawer or any holder because as a drawee, he incurs no liability on the check unless he accepts it. But the drawee will make itself liable to a suit for damages at the instance of the drawer for wrongful dishonor of the bill or check.

Thus, it is clear that under the NIL, petitioner is precluded from raising the defense of forgery by reason of her gross negligence. But under Section 196 of the NIL, any case not provided for in the Act shall be governed by the provisions of existing legislation. Under the laws of quasi-delict, she cannot point to the negligence of the

respondent drawee Bank in the selection and supervision of its employees as being the cause of the loss because her negligence is the proximate cause thereof and under Article 2179 of the Civil Code, she may not be awarded damages. However, under Article 1170 of the same Code the respondent drawee Bank may be held liable for damages. The article provides -

"Those who in the performance of their obligations are guilty of fraud, negligence or delay, and those who in any manner contravene the tenor thereof, are liable for damages."

There is no question that there is a contractual relation between petitioner as depositor (obligee) and the respondent drawee bank as the obligor. In the performance of its obligation, the drawee bank is bound by its internal banking rules and regulations which form part of any contract it enters into with any of its depositors. When it violated its internal rules that second endorsements are not to be accepted without the approval of its branch managers and it did accept the same upon the mere approval of Boon, a chief accountant, it contravened the tenor of its obligation at the very least, if it were not actually guilty of fraud or negligence.

Furthermore, the fact that the respondent drawee Bank did not discover the irregularity with respect to the acceptance of checks with second indorsement for deposit even without the approval of the branch manager despite periodic inspection conducted by a team of auditors from the main office constitutes negligence on the part of the bank in carrying out its obligations to its depositors. Article 1173 provides -

"The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstance of the persons, of the time and of the place. x x x."

We hold that banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be a high degree of diligence, if not the utmost diligence. Surely, respondent drawee Bank cannot claim it exercised such a degree of diligence that is required of it. There is no way We can allow it now to escape liability for such negligence. Its liability as obligor is not merely vicarious but primary wherein the defense of exercise of due diligence in the selection and supervision of its employees is of no moment.

Premises considered, respondent drawee Bank is adjudged liable to share the loss with the petitioner on a fifty-fifty ratio in accordance with Article 1172 which provides:

"Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances."

With the foregoing provisions of the Civil Code being relied upon, it is being made clear that the decision to hold the drawee bank liable is based on law and substantial justice and not on mere equity. And although the case was brought before the court not on breach of contractual obligations, the courts are not precluded from applying to the circumstances of the case the laws pertinent thereto. Thus, the fact that petitioner's negligence was found to be the proximate cause of her loss does not preclude her from recovering damages. The reason why the decision dealt on a discussion on proximate cause is due to the error pointed out by petitioner as allegedly committed by the respondent court. And in breaches of contract under Article 1173, due diligence on the part of the defendant is not a defense.

PREMISES CONSIDERED, the case is hereby ordered REMANDED to the trial court for the reception of evidence to determine the exact amount of loss suffered by the petitioner, considering that she partly benefited from the issuance of the questioned checks since the obligation for which she issued them were apparently extinguished, such that only the excess amount over and above the total of these actual obligations must be considered as loss of which one half must be paid by respondent drawee bank to herein petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[*] Penned by Associate Justice Celso L. Magsino, Associate Justices Nathanael P. De Pano, Jr. and Cezar D. Francisco, concurring.

[1] Rollo, p. 11.

[2] Rollo, pp. 20-21; CA Decision, pp. 2-3. See Notes 2-6 thereof.

[3] A crossed check is defined as a check crossed with two (2) lines, between which are either the name of a bank or the words "and company," in full or abbreviated. In the former case, the banker on whom it is drawn must not pay the money for the check to any other than the banker named; in the latter case, he must not pay it to any other than a banker. Black's Law Dictionary 301 (4th Ed.), citing 2 Steph. Comm. 118, note C; 7 Exch. 389; [1903] A.C. 240; Farmers' Bank v. Johnson, King & Co., 134 Ga. 486, 68 S.E. 85, 30 L.R.A., N.S. 697.

[4] Act No. 2031, enacted on February 3, 1911.

[5] Britton, Bills and Notes, Sec. 143, pp. 663-664.

[6] City of New York vs. Bronx County Trust Co., 261 N.Y. 64, 184 N.E. 495 (1933); Detroit Piston Ring Co. vs. Wayne County & Home Savings Bank, 252 Mich. 163, 233 N.W. 185 (1930); C.E. Erickson Co. vs. Iowa Nat. Bank, 211 Iowa 495, 230 N.W. 342 (1930).

[7] NIL, Sec. 16.

[8] Ibid., Sec. 191, par. 10.

[9] Detroit Piston Ring Co. vs. Wayne County & Home Savings Bank, *supra*, note 3.

[10] Defiance Lumber Co. vs. Bank of California, N.A., 180 Wash. 533, 41 P. 2d 135 (1935); National Surety Co. vs. President and Directors of Manhattan Co., et al., 252 N.Y. 247, 169 N.E. 372 (1929); Erickson Co. vs. Iowa National Bank, *supra*, note 3.

[11] 43 Phil. 678 (1922).

[12] NIL, Sec. 37.

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